

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

JANET C. BAKER, SUSAN INMAN
and OLLY NEAL

PLAINTIFFS

v.

CASE NO. 60CV-20-3565

JOHN THURSTON, in his official
capacity as the Secretary of State of
Arkansas

DEFENDANT

MOTION TO DISMISS

Comes now Defendant John Thurston, in his official capacity as the Secretary of State of Arkansas, by and through counsel, Attorney General Leslie Rutledge, and Assistant Attorney General Michael Mosley, and for his Brief in Support of Motion to Dismiss, herein states:

1. Plaintiffs bring suit against the Defendant in his official capacity as Secretary of State, and request the Court to Order the Secretary of State (hereinafter “Secretary”) to permit absentee voting for anyone for any reason in the November 2020 general election due to fear from COVID-19. *Complaint*, ¶ 89. They claim that their fear of contracting COVID-19 is not a sufficient reason to request an absentee ballot for the general election under Arkansas law. Plaintiffs request the Court rule fear of COVID-19 is a sufficient excuse under Arkansas law to vote by absentee ballot. *Complaint*, ¶¶ 63, 90.

2. The Secretary moves to dismiss the Complaint pursuant to Ark. R. Civ. P. 12(b)(6) because Plaintiffs have failed to state facts or a claim upon which relief can be granted.

3. Plaintiffs have failed to join interested parties under the Declaratory Judgment Act and the Court should exercise its discretion to dismiss the case on that basis because this action as pled will not terminate the alleged controversy in issue.

4. Furthermore, while it appears that the ultimate question of the constitutionality of State law raised in the Complaint may now be moot, the relief requested by Plaintiffs goes beyond that issue.

5. The relief requested by the Plaintiffs is barred by constitutional sovereign immunity pursuant to the Arkansas Constitution, Article Five, Section Twenty.

6. The Secretary reserves the right to plead any and all applicable affirmative defenses in the event this motion is not granted including but not limited to all doctrines of immunity, lack of a private right of action, and lack of causation. Plaintiffs' allegations of wrongdoing are denied.

7. The Secretary files contemporaneously herewith a brief in support of the instant motion.

WHEREFORE, Defendant respectfully requests that this Court dismiss the claims against him in this lawsuit and for all other just and proper relief to which he may be entitled.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

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CERTIFICATE OF SERVICE

I, Michael Mosley, certify that on July 2nd, 2020, I filed the foregoing document with the Clerk of the Court via the E-flex filing system, which shall send notification of the filing to all parties of record and their counsel.

Michael Mosley
Michael Mosley